IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 5104 of 1996

Between:

1. Kallempalli Pedda Meera Saheb, S/o Nanne Saheb,
   R/o Battuvaripalem (V), H/o Chinna Annaluru,
   Kaligiri (M), Nellore District.

2. Kallempalli Peera Saheb, S/o Rosim Saheb,
   R/o Battuvaripalem (V), H/o Chinna Annaluru,
   Kaligiri (M), Nellore District.

....PETITIONERS

AND

1. The District Collector, Nellore.

2. The Revenue Divisional Officer,
   Kavali, Nellore District.

3. The Mandal Revenue Officer,
   Kaligiri (M), Nellore District.

...RESPONDENTS

* * * *

ORDER:

Petitioners who are assignees of Ac.3-88 cents in S.No.1125/1 and Ac.3-29 cents in

S.No.1125/2 of Chinna Annaluru village filed this petition questioning the action of the Mandal Revenue Officer (3rd respondent) in resuming the land assigned under the proceedings Rc.B.859/96 dated 29.02.1996 on the assumption that they are not cultivating the said land.

2. In his counter affidavit, filed on behalf of the respondents, 3rd respondent alleged that when several members belonging to the scheduled caste community made a request for assignment of land in the aforesaid S.Nos. during the Prajala Vaddaku Palana programme held at Gangireddipalem village in December 1995, on the ground that the assignees (petitioners) sold that land to Lekkala Krishna Reddy, he issued notice under the A.P. Assigned Lands (Prohibition of Transfers) Act 1977 (Act 9 of 1977), (herein after referred to as the Act) to Lekkala Krishna Reddy on 21.12.1995 to vacate the said land, who refused to receive the same, and so he inspected the said land on 12.12.1995 and found it fallow and therefore issued notices to the petitioners on 07.02.1996 to show cause why the land should not be resumed for their not cultivating the same from the date of grant i.e., 1961 and resumed the same, since petitioners failed to send a reply, under the proceedings impugned and during his inspection of that land in December 1995 he found some persons ploughing the land with tractor, and so he directed them to stop ploughing.

3. Relying on the copies of adangals produced, the contention of the learned counsel for petitioners is that those documents belie the claim of 3rd respondent that the land was not brought under cultivation. Relying on **C.Munilakshmamma V. The District Collector, Chittoor District** and **P.Anasuyamma V. The Commissioner of Land Revenue, Govt. of A.P., Hyderabad** he contended that 3rd respondent, in any event, has no jurisdiction to pass the order impugned.

4. The contention of the learned Assistant Government Pleader is that since the petitioners failed to cultivate the land after assignment, and had alienated the same in contravention of the conditions of the grant, and since 3rd respondent has power to resume the assigned land if it is not brought under cultivation, as per B.S.O. 15(13)(3) his resuming the land, for the petitioners not bringing it under cultivation, cannot be questioned by the petitioners who failed even to send a reply to the show cause notice issued to them.

5. Copies of the adandgals produced by the petitioners disclose that they raised

Ragi and Pilli Pesara crops in the land assigned to them during 1995-1996. When the land is cultivated in 1995 as per the revenue records, how the 3rd respondent can resume it under B.S.O.No.15(13)(3) for not bringing the land under cultivation, is not explained by the 3rd respondent in his counter affidavit. The land admittedly was assigned in 1961. The order impugned is passed in 1996 i.e., about 35 years after assignment. If really the land was not brought under cultivation for such a long period, why action under B.S.O.No.15(13)(3) was not taken for 30 long years is not explained by 3rd respondent in his counter affidavit. So resumption on the ground of not bringing the land under cultivation resorted to by the 3rd respondent is unsustainable.

6. On my direction, the learned Assistant Government Pleader produced the relevant file. It shows that 3rd respondent issued notice to the person who allegedly purchased the land from the petitioners, to show cause why the land cannot be taken possession from him for his purchasing it in breach of the condition of assignment. As per the counter affidavit of the 3rd respondent the said notice was refused. If petitioners, really alienated the land assigned to them, in violation of the terms of the grant, 3rd respondent could have taken proceedings under the Act. Why he, without taking recourse to the proceedings under the Act, took recourse to B.S.O.15(13)(3) is not explained by the 3rd respondent in his counter affidavit. Third respondent ignoring the entries in the adangals should not, merely on the ground of the petitioners failure to issue reply to his show cause notice, invoke B.S.O.15(13)(3) to cancel the patta granted more than three decades back.

7. For the above reasons Rule nisi is made absolute and the order impugned in the petition is set aside. This order however does not prevent the respondents taking recourse to the provisions of the Act if the petitioners, in violation of the terms of the grant, alienated the land assigned to them. Parties are directed to bear their own costs.

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C.Y.SOMAYAJULU, J.

Date: 08th November 2005.

BSB